

ESTATE OF JAMES ANDREWS WHITE

a/k/a JAMES P. ANDREWS

IBIA 77-16

Decided May 24, 1977

Appeal from Administrative Law Judge's order denying extension of time in which to file a petition for rehearing.

Reversed.

1. Indian Probate: Pleading: Extension of Time

A timely request for an extension of time was submitted to the appropriate office on October 15, 1976, as a result of the personal visit by appellant's representative to the Agency Superintendent that day, during which time Bureau assistance was provided in drafting such request.

2. Indian Probate: Pleading: Extension of Time

Where an extension request was sent to the wrong office for filing on account of incorrect advice from Department personnel, who are responsible for knowing right procedures, the Department is estopped from denying such request on grounds that it was not filed at the proper place.

APPEARANCES: Stephen C. Rice, Esq., for appellant, Millie Andrews.

OPINION BY ADMINISTRATIVE JUDGE HORTON

Millie Andrews, through her attorney, Stephen C. Rice, appeals from an order denying an extension of time in which to file a petition for rehearing in the above-captioned estate.

James Andrews White, a/k/a James P. Andrews, deceased unallotted Nez Perce, died intestate on February 10, 1971, possessed of trust property in Washington and Idaho. An order determining heirs was entered by Administrative Law Judge Frances C. Elge on August 18, 1976. In the Notice of Decision Judge Elge stated: "This decision becomes final 60 days from the date of this notice. Any person aggrieved by the decision of the Judge may, within the 60 days, but not thereafter, file with the Superintendent a written petition for rehearing * * *." The foregoing instruction is taken from 43 CFR 4.241(a).

Appellant maintained at the hearing that under Idaho statutes in effect at the time of decedent's death, she should be declared sole heir to decedent's Idaho property. In addition she asserted that certain instruments executed by three adoptive first cousins of decedent effectively conveyed their inherited interests to her. Both of the above positions were rejected in Judge Elge's order determining heirs. Appellant is, therefore, an aggrieved person within the meaning of Department rules.

On October 15, 1976, the 58th day from the date of the order determining heirs, appellant's daughter, acting on her mother's behalf, sought assistance from the Superintendent of the Northern Idaho Indian Agency in applying for an extension of time in which to file a petition for rehearing in this estate.

Department regulations provide that a request for an extension of time "must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed." 43 CFR 4.22(f)(2).

Based on the above rule, appellant's representative had gone to the correct place to submit a request for extension of time and was there in sufficient time to file a timely request. Nevertheless, the Superintendent advised appellant's representative to telephone the Administrative Law Judge's office in Portland, Oregon, for instructions.

It was related to appellant's representative by the Portland office that any request for an extension of time would have to be submitted in writing. Thereupon, a staff member of the Northern Idaho Indian Agency assisted in the preparation of a letter for appellant's signature addressed to the Administrative Law Judge in Portland, Oregon, requesting an extension of time. This letter,

attached to appellant's brief as Exhibit 2, is dated October 15, 1976, and is stamped received by the Administrative Law Judge's office in Portland as of October 18, 1976, the final day for the filing of the document. As noted in Judge Elge's October 29, 1976 Order Denying Extension of Time the foregoing written request was forwarded by Judge Snashall's office to her office where it was received on October 20, 1976.

Judge Elge's Order Denying an Extension of Time states that appellant's written request dated October 15, 1976, "was not filed in the office where the filing was required" (Order, p. 2). We think Judge Elge would not have pointed to such failure in denying the extension request had she known of the wrong advice given to appellant by Department personnel as described above. It is clear, as appellant's brief emphasizes, that appellant's representative

[D]id go to the office where filing is required and therein did ask for and received help in drafting a written request for an extension of time. The written request dated October 15, 1976, should have been retained and filed in the office of the Superintendent at the North Idaho Indian Agency * * *.

(Appellant's Brief, p. 4.)

[1, 2] Based on all of the above we believe the following two rulings are appropriate in this appeal: First, we hold that a timely request for an extension of time was submitted to the appropriate

office on October 15, 1976, as a result of the personal visit by appellant's representative to the Superintendent that day, during which time Bureau assistance was provided in drafting such request. Second, we hold that where an extension request was sent to the wrong office for filing on account of incorrect advice from Department personnel who are responsible for knowing right procedures, the Department is estopped from denying the request on grounds that it was not filed at the proper place. 1/

Appellant's brief refers to additional efforts to file a proper extension request on October 18, 1976, the 60th and final day for its receipt. It is alleged, among other things, that appellant's representative hand-delivered a written request for an extension to the Northern Idaho Indian Agency but that when she arrived there at approximately 4:45 p.m., the office was closed. This second request was then filed on the morning of October 19, 1976, 1 day late.

Because of our holding that the request for extension dated October 15, 1976, should be granted, we need not decide whether

1/ Implicit in these two holdings is that authority exists to grant an extension of time in which to file a petition for rehearing. We read existing regulations as permitting such action by Administrative Law Judges responsible for Indian probate in contrast to older practices of the Department by which only the Secretary could permit such extensions "for good cause shown." See Estate of Jack Fighter, 71 I.D. 203 (1964). By no means, however, should parties presume that simply because a request for an extension of time in which to file a petition for rehearing has been timely filed, that it will automatically be granted. Such decision rests on the sound discretion of the Administrative Law Judge.

the extenuating circumstances referred to by appellant as occurring on October 18, 1976, further justify reversal of Judge Elge's order of October 29, 1976.

The extent of the order which the Board herein renders is that appellant shall be allowed 30 days from the date of this decision to file a petition for rehearing with the Superintendent of the Northern Idaho Indian Agency. It remains the responsibility of appellant to set forth all grounds upon which such petition is based, including, if applicable, a description of any newly discovered evidence in support thereof in accordance with procedures prescribed at 43 CFR 4.241(a). The Administrative Law Judge to whom this case is assigned retains full authority to dispose of the petition as he deems proper, as provided at 43 CFR 4.241(b) and (c).

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Order Denying Extension of Time entered by Administrative Law Judge Frances C. Elge on October 29, 1976, be, and the same is hereby REVERSED. It is FURTHER ORDERED that Millie Andrews, appellant herein, shall be allowed 30 days from the date of this decision to file a petition for rehearing with the Superintendent of the Northern Idaho Indian Agency who shall, as provided at 43 CFR 4.241(a), promptly forward it to the Administrative Law Judge's office in Billings, Montana.

This decision is final for the Department.

Done at Arlington, Virginia.

Wm. Philip Horton
Administrative Judge

We concur:

Alexander H. Wilson
Chief Administrative Judge

Mitchell J. Sabagh
Administrative Judge